



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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Merriam Farm Inc.
195 Poor Farm Road
New Ipswich, NH 03071

Attn: David G. Keurulainen, President

Re: Wetlands File #2003-02556

ADMINISTRATIVE ORDER
No. WD 04-019

October 22, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Merriam Farm, Inc. pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Merriam Farm, Inc. ("Merriam Farm") is a New Hampshire corporation having a mailing address of P.O. Box 102, Walpole, NH 03608.

C. STATEMENTS OF FACTS AND LAW

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, the Commissioner of DES has adopted NH Code of Admin. Rules Wt *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".
4. Admin. Rule Wt 304.05(b) states that "skid trails and truck roads shall be laid out using appropriate erosion control devices, as outlined in the *Best Management Practices for Erosion Control on Timber Operations in NH* [("BMPs")], so that the grade approaching a stream or pond is broken, and surface water is dispersed."

5. Admin. Rule Wt 304.05(c) states that “culverts, bridges, pole fords or other crossings shall be installed on skid trails and temporary truck roads at all stream crossings in accordance with procedures outlined in the [BMPs].”

6. The BMPs include the following relevant erosion control provisions:

“Skid Trails: A well thought out efficient transportation system will minimize the area disturbed and vulnerable to erosion. Major skid trails should be located away from streams, ponds, lakes and wetlands. **At no time will logs be permitted to be skidded or equipment driven through flowing streams.** Silt fencing, haybale erosion checks or water diversions shall be used to prevent soil from skid trails from entering streams and other surface waters.” BMP pp. 16-17 (Emphasis in original).

“Water Bars: Practice applies on any sloping truck road or skid trail where surface water runoff may cause erosion. Install water bars at the top of any sloping road or trail and at proper spacing along steep sections.” BMP pp. 23-24.

“Road and trail grades approaching stream crossings should be broken and surface water dispersed so it will not reach the watercourse.” BMP pp. 41.

“Stream Culverts: Protect the upstream end of the fill around the culvert from erosion by placement of a rock header. Protect the downstream end of the fill around the culvert from erosion by seeding and mulching and providing rip rap.” BMP pp. 41-44.

7. Merriam Farm is the owner of the property located on Merriam Road in the towns of Surry and Walpole (“the Properties”), more specifically identified on Town of Surry Tax Map 4 as Lot 21 (“the Surry Property”) and on Town of Walpole Tax Map 3 as Lot 49 and 50 (“the Walpole Property”).

8. On March 16, 2003, Merriam Farm filed a Notice of Intent to Cut Wood or Timber (“Intent to Cut”) for timber harvesting activities to occur on the Walpole Property. The Intent to Cut was filed with the Town of Walpole. The Intent to Cut identifies D.H. Hardwick & Sons, Inc. as the logger for the forestry operations to be performed on the Walpole Property.

9. On August 6, 2003, DES received Merriam Farm’s Notification of Forest Management Activities Having Minimum Wetlands Impact (“Notification”) for the Properties. D.H. Hardwick & Sons, Inc. signed the form as the logger on the Notification.

10. On August 18, 2003, DES issued a “Complete Forestry Notification” letter to Merriam Farm for the Properties, acknowledging receipt of the Notification and stating that their Notification is sufficient to start work provided that they adhere to certain conditions, including that they follow the BMPs and avoid wetlands and stream crossings where possible.

11. On October 10, 2003, DES received a complaint alleging erosion of unstable soils and turbidity in Merriam Brook as a result of logging activities on the Properties.

12. On October 15, 2003, DES received a complaint alleging that new culverts had been installed at Merriam Road on the Properties.

13. On October 29, 2003, DES personnel conducted an inspection of the Properties and found the following violations:

- a. Three culverts consisting of an approximately 18" x 20', 18" x 30' and 24" x 30' corrugated metal pipe had been installed/replaced on Merriam Road within three jurisdictional intermittent streams;
- b. Approximately 1,000 linear feet of intermittent stream had been dredged and filled from recent logging, site grading, excavation and roadway improvement activities;
- c. Approximately 9,000 square feet of jurisdictional wetlands had been dredged and filled (i.e. tire rutting, erosion and sedimentation); and
- d. The project was not carried out using the BMPs, specifically the BMPs for skid trails.

14. On February 17, 2004, the DES Wetlands Bureau issued a Letter of Deficiency ("LOD") to Merriam Farm that listed the deficiencies observed on the October 29, 2003 inspection of the Properties and requested the following actions:

- a. "Immediately stabilize the site with appropriate erosion, sediment and turbidity controls and monitor the site for weather changes to ensure compliance with BMPs;
- b. "Voluntarily refrain from continuing work in areas on the Properties that are within Wetlands Bureau jurisdiction;
- c. "By March 15, 2004, submit a restoration plan to DES for review and approval. Have the restoration plan prepared by a certified wetland scientist or qualified environmental engineer, and include provisions for stabilizing the site, restoration of the 1,000 linear feet of intermittent streams and 9,000 square feet of wetlands on the Properties. Submit the following with the restoration plan:
 - i. "A plan with dimensions, drawn to scale, showing existing conditions, with wetland boundaries and proposed conditions after reestablishing the jurisdictional areas;
 - ii. "A detailed description of the proposed means of erosion, sediment and turbidity control and stabilization of the restoration areas;
 - iii. "A description of the proposed planting plan for the stabilization and revegetation of the restoration area and control of invasive species such as purple loosestrife and common reed;

- iv. "A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date;
- v. "A description method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum of two monitoring progress reports during two successive growing seasons following completion of the restoration project;

d. "Retain a qualified wetland scientist to supervise the implementation of the restoration plan and to submit the restoration progress reports;

e. "Implement the restoration plan only after receiving written approval and as conditioned by DES;

f. "By April 15, 2004, submit an After-the-Fact Standard Dredge and Fill application to DES if you desire to retain the three culverts installed within Merriam Road."

15. On July 16, 2004, DES reinspected the Properties and observed the following new impact areas, in addition to the deficiencies identified in the LOD (which had not been corrected):

- a. An intermittent stream crossing had been removed without stabilizing the slopes in violation of the BMPs, causing an impact area of approximately 10' x 20' (200 square feet);
- b. A failure to use a crossing device at a stream crossing and a failure to stabilize the slopes in violation of the BMPs, causing an impact area of approximately 15' x 30' (15 linear feet);
- c. A second failure to use a crossing device at a stream crossing and a failure to stabilize the slopes in violation of the BMPs, causing a second impact area of approximately 10' x 20' (200 square feet); and
- d. Many of the steep slopes on the Properties required additional water bars, seeding and mulching in accordance with the BMPs.

16. During the July 16, 2004 inspection, DES personnel also observed the following, relative to the previous impact areas on the Properties identified in the LOD:

- a. No new erosion, sediment or turbidity controls had been installed on the Properties, as had been requested by the LOD;
- b. The failed erosion and sediment controls that had been in place during the October 29, 2003 inspection had not been repaired; and
- c. No headwalls or other stabilization had been installed along the slopes adjacent to one of the culverts identified in the LOD.

17. To date, DES has not received a restoration plan for the Properties, as requested by the LOD.
18. To date, DES has not received information from Merriam Farm to indicate that a certified wetlands scientist has been retained, as requested by the LOD.
19. To date, DES has not received an After-the-Fact Standard Dredge and Fill application to perform work in intermittent streams or wetlands on the Properties.
20. A review of DES records show that no permit was issued under RSA 482-A:3 to Merriam Farm for the installation of culverts on the Properties.

D. DETERMINATION OF VIOLATIONS

1. Merriam Farm has violated RSA 482-A:3, I by replacing three culverts within three intermittent streams without a permit from DES.
2. Merriam Farm has violated RSA 482-A:3, I by dredging and filling 1,000 feet of intermittent stream without a permit from DES.
3. Merriam Farm has violated RSA 482-A:3, I by dredging and filling 9,000 square feet of jurisdictional wetlands without a permit from DES.
4. Merriam Farm has violated Wt 304.05(b) by failing to install water bars on skid trails as required by the BMPs.
5. Merriam Farm has violated Wt 305.05(c) by failing to use appropriate erosion controls to disperse surface water at stream crossings and failing to use the BMPs relating to skid trails and stream crossings.
6. Merriam Farm has violated Wt 305.05(c) by failing to install stream crossings on skid trails and failing to use the BMPs relating to skid trails and water bars.
7. Merriam Farm has violated Wt 305.05(c) by failing to use erosion controls at stream crossings and failing to use the BMPs relating to skid trails and stream crossings.

E. ORDER

Based on the above findings, DES hereby orders Merriam Farm, Inc. as follows:

1. **Within 30 days of the date of this Order**, prepare an erosion and sediment control plan ("Plan") for the Properties, and submit said Plan to DES for review. The Plan shall be prepared by a certified wetland scientist or a certified professional erosion control specialist and shall include temporary and permanent erosion control measures necessary to stabilize the Properties, protect surface water quality, prevent further impacts to surface waters and demonstrate how the

Properties will be brought into compliance with the BMPs. The Plan shall also include a schedule for implementing the measures described in the Plan.

2. Implement the Plan on the Properties, after receiving approval from DES.
3. **Within 30 days of the date of this Order**, submit a wetlands restoration plan to DES for review and approval. The restoration plan shall be prepared by a certified wetland scientist, and include provisions for restoration of the wetland and intermittent streams impacted by activities at the Properties. The following shall be submitted with the restoration plan:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. existing conditions on the sites, with delineated jurisdictional wetland boundaries and land topography; and
 - ii. proposed conditions after reestablishing the jurisdictional areas;
 - b. A detailed description of the proposed planting plan for the revegetation of the restoration areas;
 - c. A description of the proposed construction sequence, equipment, methods for accomplishing restoration and anticipated restoration compliance date.
 - d. A description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum, monitoring progress reports for two successive growing seasons following completion of the restoration project. These reports should be submitted to DES on November 1, 2005, and November 1, 2006.
4. **Immediately** retain a certified wetland scientist or certified professional erosion control specialist to supervise the implementation of the restoration plan prepared in accordance with Item 3 above and to submit the restoration progress reports.
5. Implement the restoration plan proposed in accordance with Item 3 above only after receiving written approval, and as conditioned, by DES.
6. Send the proposed plan and other correspondence in connection with this Administrative Order, **other than appeals**, to DES as follows:

William A. Thomas, Wetlands Bureau
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
e-mail: wthomas@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing, if in its opinion, good cause is provided in the motion.


Filing an appeal or motion for reconsideration does not relieve Merriam Farm, Inc. of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Merriam Farm, Inc. remains obligated to comply with all applicable requirements, in particular restoration and stabilization of the Properties. DES will continue to monitor Merriam Farm Inc.'s compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Cheshire County Registry of Deeds so as to run with the land.


Harry T. Stewart, Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7003 2260 0005 9209 9444

cc: Gretchen R. Hamel, Legal Unit Administrator ✓
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
James Craig, Registered Agent for Merriam Farm, Inc.
John Lampi, Treasurer of Merriam Farm, Inc.
Surry Conservation Commission
Surry Board of Selectmen
Walpole Conservation Commission
Walpole Board of Selectmen